

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 15-6347 PA (FFMx)	Date	August 21, 2015
Title	Bryan Black v. Sears Hometown and Outlets LLC, et al.		

Present: The Honorable		PERCY ANDERSON, UNITED STATES DISTRICT JUDGE	
Stephen Montes Kerr		Not Reported	
Deputy Clerk		Court Reporter	
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:	
None		None	
		Tape No.	

Proceedings: IN CHAMBERS - COURT ORDER

Before the Court is a Notice of Removal filed by Sears Hometown and Outlet Stores, Inc. and Cardinal Appliance Hardware, Inc. (erroneously sued as Marlu LC, Inc., d/b/a Marlu Investment Group) (collectively, the “Removing Defendants”) on August 20, 2015. In the Notice of Removal, the Removing Defendants assert that this Court has jurisdiction over the action brought against them by plaintiff Bryan Black (“Plaintiff”) based on the Court’s diversity jurisdiction. See 28 U.S.C. § 1332.

Federal courts are courts of limited jurisdiction, having subject matter jurisdiction only over matters authorized by the Constitution and Congress. See, e.g., Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377, 114 S. Ct. 1673, 1675, 128 L. Ed. 2d 391 (1994). A suit filed in state court may be removed to federal court if the federal court would have had original jurisdiction over the suit. 28 U.S.C. § 1441(a). A removed action must be remanded to state court if the federal court lacks subject matter jurisdiction. 28 U.S.C. § 1447(c). “The burden of establishing federal jurisdiction is on the party seeking removal, and the removal statute is strictly construed against removal jurisdiction.” Prize Frize, Inc. v. Matrix (U.S.) Inc., 167 F.3d 1261, 1265 (9th Cir. 1999). “Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).

In attempting to invoke this Court’s diversity jurisdiction, the Removing Defendants must prove that there is complete diversity of citizenship between the parties and that the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332. To establish citizenship for diversity purposes, a natural person must be a citizen of the United States and be domiciled in a particular state. Kantor v. Wellesley Galleries, Ltd., 704 F.2d 1088, 1090 (9th Cir. 1983). Persons are domiciled in the places they reside with the intent to remain or to which they intend to return. See Kanter v. Warner-Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001). “A person residing in a given state is not necessarily domiciled there, and thus is not necessarily a citizen of that state.” Id. For the purposes of diversity jurisdiction, a corporation is a citizen of any state where it is incorporated and of the state where it has its principal place of business. 28 U.S.C. § 1332(c); see also Indus. Tectonics, Inc. v. Aero Alloy, 912 F.2d 1090, 1092 (9th Cir. 1990). The citizenship of an LLC is the citizenship of its members. See Johnson v. Columbia Props.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 15-6347 PA (FFMx)	Date	August 21, 2015
Title	Bryan Black v. Sears Hometown and Outlets LLC, et al.		

Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006) (“[L]ike a partnership, an LLC is a citizen of every state of which its owners/members are citizens.”); Marseilles Hydro Power, LLC v. Marseilles Land & Water Co., 299 F.3d 643, 652 (7th Cir. 2002) (“the relevant citizenship [of an LLC] for diversity purposes is that of the members, not of the company”); Handelsman v. Bedford Village Assocs., Ltd. P’ship, 213 F.3d 48, 51-52 (2d Cir. 2000) (“a limited liability company has the citizenship of its membership”); Cosgrove v. Bartolotta, 150 F.3d 729, 731 (7th Cir. 1998); TPS Utilicom Servs., Inc. v. AT & T Corp., 223 F. Supp. 2d 1089, 1101 (C.D. Cal. 2002) (“A limited liability company . . . is treated like a partnership for the purpose of establishing citizenship under diversity jurisdiction”).

Plaintiff alleges claims against Sears Hometown and Outlets LLC. One of the Removing Defendants, however, is Sears Hometown and Outlet Stores, Inc. The Notice of Removal does not allege or provide evidence that Sears Hometown Outlet Stores, Inc. is the proper defendant in this case, or that Sears Hometown and Outlets LLC is the incorrect defendant. Therefore, the allegations of Sears Hometown and Outlet Stores, Inc.’s citizenship are insufficient to invoke this Court’s diversity jurisdiction.

Additionally, relying on Plaintiff’s Complaint, the Notice of Removal alleges “Plaintiff was a California citizen at the time the case was filed and remains a California citizen.” (Notice of Removal at 5.) The Complaint, however, only alleges Plaintiff’s residence. “At all times mentioned in this complaint, Plaintiff . . . was a resident of California.” (Compl. ¶ 2.) Because the only support for the Removing Defendants’ allegation of Plaintiff’s citizenship is an allegation of residence, and residence is not the same as citizenship, the Notice of Removal’s allegations are insufficient to establish Plaintiff’s citizenship. “Absent unusual circumstances, a party seeking to invoke diversity jurisdiction should be able to allege affirmatively the actual citizenship of the relevant parties.” Kanter, 265 F.3d at 857; Bradford v. Mitchell Bros. Truck Lines, 217 F. Supp. 525, 527 (N.D. Cal. 1963) (“A petition [for removal] alleging diversity of citizenship upon information and belief is insufficient.”). As a result, the Removing Defendants’ allegations are insufficient to invoke this Court’s diversity jurisdiction.

Therefore, the Removing Defendants have failed to meet their burden to demonstrate the Court’s diversity jurisdiction. Accordingly, the Court remands this action to Los Angeles County Superior Court, Case No. BC586054. See 28 U.S.C. § 1447(c).

IT IS SO ORDERED.